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10 **UNITED STATES DISTRICT COURT**  
11 **CENTRAL DISTRICT OF CALIFORNIA**

12 LOS ANGELES WATERKEEPER, a  
13 California non-profit association;  
14 COMMUNITIES FOR A BETTER  
15 ENVIRONMENT, a non-profit  
corporation,

16 Plaintiffs,

17  
18 v.

19 LINDE, INC., a Delaware corporation,  
20

21 Defendant.  
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Case No.: 2:24-cv-8849-SVW-RAO

**~~PROPOSED~~ CONSENT DECREE**

**CONSENT DECREE**

**WHEREAS**, Plaintiff Los Angeles Waterkeeper (“LA Waterkeeper”) is a 501(c)(3) non-profit public benefit corporation organized under the laws of the State of California, with its main office in Los Angeles, California;

**WHEREAS**, Plaintiff Communities for a Better Environment (“CBE” and collectively with LA Waterkeeper, “Plaintiffs”) is an environmental justice non-profit 501(c)(3) organization organized under the laws of the State of California with local offices in Huntington Park and Wilmington, California;

**WHEREAS**, LA Waterkeeper is dedicated to the preservation, protection and defense of the surface, ground, coastal and ocean waters of Los Angeles County from all sources of pollution and degradation;

**WHEREAS**, CBE is dedicated to empowering low-income communities of color that seek a voice in determining the health of their air, water and land;

**WHEREAS**, Defendant Linde Inc. (“Defendant”) owns and operates a facility at 2006 East 223rd Street in Carson, California 90810, under Waste Discharger Identification number 4 19I013455 (the “Carson Facility”) and a facility at 2300 E. Pacific Coast Highway in Wilmington, California 90744, under Waste Discharger Identification number 4 19I001017 (the “Wilmington Facility”) (each of the Carson Facility and Wilmington Facility shall be referred to individually as a “Facility” and collectively as the “Facilities”);

**WHEREAS**, the Facilities are each categorized under Standard Industrial Classification (“SIC”) Code 2813, covering “Industrial Gases”;

**WHEREAS**, storm water discharges associated with industrial activity at the Facilities are regulated by the National Pollutant Discharge Elimination System (“NPDES”) General Permit No. CAS000001 [State Water Resources Control Board], Water Quality Order 2014-0057-DWQ, as amended by Order Nos. 2015-0122-DWQ and 2018-0028-DWQ incorporating: 1) Federal Sufficiently Sensitive Test Method Ruling; 2) Total Maximum Daily Load Implementation Requirements; and 3)

1 Statewide Compliance Options Incentivizing On-Site or Regional Storm Water  
2 Capture and Use, at the Facilities (“General Permit” or “Permit”)<sup>1</sup>, and the Federal  
3 Water Pollution Control Act, 33 U.S.C. §§ 1251, *et seq.* (“Clean Water Act” or  
4 “CWA”), Sections 301(a) and 402, 33 U.S.C. §§ 1311(a), 1342;

5 **WHEREAS**, Defendant’s operations at the Facilities result in discharges of  
6 pollutants into waters of the United States and are regulated by the Clean Water Act  
7 Sections 301(a) and 402. 33 U.S.C. §§ 1311(a), 1342;

8 **WHEREAS**, the General Permit requires all permittees, including Defendant,  
9 to comply with, inter alia, the following mandates: (1) develop and implement a  
10 storm water pollution prevention plan (“SWPPP”) and a storm water monitoring  
11 implementation plan (“MIP”), (2) control pollutant discharges using, as applicable,  
12 best available technology economically achievable or best conventional pollutant  
13 control technology to prevent or reduce pollutants through the development and  
14 application of Best Management Practices (“BMPs”), which must be detailed in and  
15 timely updated in the SWPPP, (3) reduce and eliminate discharges necessary to  
16 comply with any and all applicable Water Quality Standards, and (4) implement a  
17 monitoring and reporting program, including the MIP, designed to assess compliance  
18 with the Permit;

19 **WHEREAS**, on March 26, 2024, Plaintiffs issued notices of intent to file suit  
20 as to each Facility (“60-Day Notice Letters”) to Defendant, its registered agent, the  
21 Administrator of the United States Environmental Protection Agency (“EPA”), the  
22 Executive Director of the State Water Resources Control Board (“State Board”), the  
23 Executive Director of the Los Angeles Regional Water Quality Control Board  
24 (“Regional Board”), the Regional Administrator of EPA Region IX, and the U.S.

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27 <sup>1</sup> Any references to the “General Permit” herein shall be to the then-effective version of the permit, regardless of  
28 Any reference in this Consent Decree to specific sections or subsections of the General Permit that are moved,  
modified, or otherwise changed in a subsequent version of the General Permit shall be to such subsequent reference(s)  
as if set forth herein.

1 Attorney General of the U.S. Department of Justice, alleging violations of the Clean  
2 Water Act and the General Permit;

3 **WHEREAS**, on October 15, 2024, Plaintiffs filed a complaint against  
4 Defendant in the Central District of California (“Court”), Civil Case No2:24-cv-8849  
5 (“Complaint”);

6 **WHEREAS**, Plaintiffs’ Complaint alleged violations of the General Permit  
7 and the Clean Water Act based on the 60-Day Notice Letters;

8 **WHEREAS**, Defendant neither admits nor denies the allegations set forth in  
9 the 60-Day Notice Letters and the Complaint relating to the Facilities;

10 **WHEREAS**, Plaintiffs and Defendant (collectively, “Settling Parties” or  
11 “Parties”), without adjudication of Plaintiffs’ claims or any admission of liability by  
12 Defendant, agree that it is in their mutual interest to enter into a Consent Decree  
13 setting forth terms and conditions appropriate to resolving the allegations set forth in  
14 the 60-Day Notice Letters and Complaint without further proceedings;

15 **WHEREAS**, all actions taken by Defendant pursuant to this Consent Decree  
16 shall be made in compliance with all applicable federal, state and local laws, rules  
17 and regulations.

18 **NOW, THEREFORE, IT IS HEREBY STIPULATED BETWEEN THE**  
19 **SETTLING PARTIES AND ORDERED AND DECREED BY THE COURT AS**  
20 **FOLLOWS:**

21 1. The Court has jurisdiction over the subject matter of this action pursuant  
22 to Section 505(a)(1)(A) of the CWA, [33 U.S.C. § 1365\(a\)\(1\)\(A\)](#).

23 2. Venue is appropriate in the Central District Court pursuant to Section  
24 505(c)(1) of the CWA, [33 U.S.C. § 1365\(c\)\(1\)](#), because the Facilities at which the  
25 alleged violations are taking place are located within this District.

26 3. The Complaint states a claim upon which relief may be granted against  
27 Defendant pursuant to Section 505 of the CWA, [33 U.S.C. § 1365](#).

28 4. Plaintiffs have standing to bring this action.

1           5.     The Court shall retain jurisdiction over this action for purposes of  
2 interpreting, modifying, or enforcing the terms of this Consent Decree.

3 **I.     OBJECTIVES**

4           6.     It is the express purpose of the Settling Parties through this Consent  
5 Decree to further the objectives of the Clean Water Act, and to resolve all issues  
6 alleged by Plaintiffs in their 60-Day Notice Letters and Complaint.

7           7.     In light of these objectives and as set forth fully below, Defendant agrees  
8 to comply with the provisions of this Consent Decree, terms and conditions of the  
9 General Permit, and all applicable sections of the CWA at the Facilities.

10 **II.    AGENCY REVIEW AND DEFINITIONS**

11 **A.     AGENCY REVIEW OF CONSENT DECREE**

12           8.     Agency Review. Plaintiffs shall submit this Consent Decree to the  
13 United States Department of Justice and the EPA (the “Federal Agencies”) for agency  
14 review consistent with 40 C.F.R. § 135.5. The agency review period expires forty-  
15 five (45) calendar days after receipt by the Federal Agencies (“Agency Review  
16 Period”), as evidenced by certified return receipts, copies of which shall be provided  
17 to Defendant. In the event that the Federal Agencies object to entry of this Consent  
18 Decree or to any portion of this Consent Decree, the Parties agree to meet and confer  
19 to attempt to resolve the issue(s) raised by the Federal Agencies. If the Parties are  
20 unable to resolve any issue(s) raised by the Federal Agencies in their comments, the  
21 Parties agree to expeditiously seek a settlement conference with the assigned  
22 Magistrate Judge to resolve any issue(s).

23           9.     Court Notice. Plaintiffs shall notify the Court of the receipt date by the  
24 Federal Agencies, as required by 40 C.F.R. § 135.5, in order to coordinate the Court’s  
25 calendar with Agency Review Period.

26           10.    Entry of Consent Decree. Following the expiration of the Agency  
27 Review Period, Plaintiffs shall submit the Consent Decree to the Court for entry.  
28

**B. DEFINITIONS**

11. Terms used in this Consent Decree which are defined in the General Permit, CWA, or regulations or rules promulgated under the CWA have the meaning assigned to them in the General Permit, statutes, regulations or rules. Additionally, whenever the terms listed below are used in this Consent Decree, whether or not capitalized, the following definitions apply:

- a. “Consent Decree” means this Consent Decree and any attachments or documents incorporated by reference.
- b. “Day” means a calendar day. In computing any period of time under this Consent Decree, where the last day of such period is a Saturday, Sunday, or Federal or State Holiday, the period runs until the close of business on the next day that is not a Saturday, Sunday, or Federal or State Holiday.
- c. “Discharge Point” means each discharge location designated in the then-current SWPPP for the applicable Facility.
- d. “Effective Date” means the day this Consent Decree is approved and entered by the Court.
- e. “Forecasted Rain Event” means a forecasted rain event as determined by the National Oceanic and Atmospheric Administration (<http://forecast.weather.gov/>) using the following search terms and/or URLs
  - i. Carson Facility. “90810 Lincoln Village, Carson, CA, USA” available at <https://forecast.weather.gov/MapClick.php?lat=33.8318&lon=-118.2242>.
  - ii. Wilmington Facility. “90813, Wilmington, Los Angeles, CA, USA” available at

<https://forecast.weather.gov/MapClick.php?lat=33.781&lon=-118.2246>.

- f. “Term” means the period between the Effective Date and the “Termination Date.”
- g. “Termination Date” as to each Facility means the earliest of the following events:
  - i. June 30, 2028;
  - ii. June 30, 2026, if there have been no annual or instantaneous maximum NAL exceedances, as defined by the General Permit, since the Effective Date; or
  - iii. Five (5) days after Defendant provides Plaintiffs with notice of approval by the Regional Board of a Notice of Termination (“NOT”) as that term is defined in the General Permit for the applicable Facility.
  - iv. Notwithstanding the foregoing, if any monetary requirements pursuant to Section III.E and F of the Consent Decree are still owing upon the trigger of the applicable event enumerated in Paragraphs 11.g.i-iii above, then the Consent Decree will terminate upon satisfaction of the monetary requirements.
  - v. Notwithstanding the foregoing, if any Dispute Resolution proceeding in accordance with Section IV of this Consent Decree is pending upon the trigger of the applicable event enumerated in Paragraphs 11.g.i-iii above, then the Consent Decree will terminate seven (7) days from either notice by the Settling Party that invoked Dispute Resolution that the dispute has been fully resolved or an order of the Court resolving the dispute.

- 1
- 2 h. “Wet Season” means the period beginning October 1st of any
- 3 given calendar year and ending June 30th of the following
- 4 calendar year.

5 **III. COMMITMENTS OF THE SETTLING PARTIES**

6 **A. STORM WATER POLLUTION CONTROL BEST MANAGEMENT PRACTICES**

7 12. Non-Storm Water Discharge Prohibition. Any unauthorized non-storm

8 water discharge, as defined in the General Permit, shall be a violation of this Consent

9 Decree.

10 13. Current and Additional Best Management Practices. Defendant shall

11 implement BMPs identified in the respective SWPPPs for the Carson Facility and

12 Wilmington Facility and BMPs described herein, and shall develop and implement

13 additional BMPs as necessary to comply with the provisions of this Consent Decree

14 and the General Permit.

15 14. Rain Gauge/Sensor. Defendant shall install and maintain electronic rain

16 gauges or sensors at each Facility within ten (10) days of the Effective Date. The rain

17 gauge/sensor shall be capable of measuring precipitation down to at least 0.1 inches,

18 and record start/stop times and non-cumulative precipitation for each rain event.

19 During the Term, Defendant shall collect data using the gauge/sensor for all

20 precipitation events to the nearest 0.1 inch, including start/stop times. Data from the

21 rain gauge/sensor shall be conclusive of precipitation quantities and timing for

22 purposes of this Consent Decree, as applicable, except in the event of equipment

23 malfunctions.

24 15. Structural and Non-Structural BMPs for the Facilities. Defendant shall

25 develop and implement the following BMPs at the Facilities:

- 26 a. As soon as possible but no later than thirty (30) days of the
- 27 Effective Date, patch, pave, or otherwise resurface areas of
- 28 degraded pavement or asphalt throughout the Facilities;



- b. As soon as possible but no later than thirty (30) days of the Effective Date, at the Carson Facility only, evaluate whether installation of berms, curbs, or similarly effective physical barriers is necessary to prevent storm water discharges from any point other than Discharge Points and, if so, install such berms, curbs, or similar physical barriers, as applicable;
- c. As soon as possible but no later than thirty (30) days of the Effective Date, at the Carson Facility, expand the footprint of the cooling tower berming to contain cooling tower drift and/or leaks;
- d. As soon as possible but no later than thirty (30) days of the Effective Date, at the Carson Facility, confirm additional gravel is added to landscaped areas in Drainage Area 3, as indicated in the Carson Facility's December 2023 Level 1 ERA Report;
- e. Implement a sweeping program (1) using a regenerative air or vacuum sweeper certified by the South Coast Air Quality Management District with the capacity to collect and retain PM-10 (10  $\mu$ m) particles on accessible paved areas at least once per month outside of the Wet Season and once per week during the Wet Season at the Wilmington Facility, and twice monthly at the Carson Facility, and (2) employ hand sweeping and/or vacuuming on the same schedule in areas a mechanical sweeper cannot access;
- f. Employ and secure new wattles/filters/filtration socks (biochar or other equivalent media) to remove sediments, metals, and organic materials in storm water discharged from the Facilities, and configure such wattles/filters/socks to achieve maximum contact time with storm water prior to discharge, *i.e.*, in multiple layers, complete rings, and/or overlapping formations. Defendant shall,

thereafter, employ and secure new wattles/filters/socks in the same manner annually prior to the start of the Wet Season, no later than September 15<sup>th</sup>;

- g. During the Wet Season, as necessary, replace the wattles/filters/socks when degraded or ineffective, including without limitation when there are rips, tears or other visual damage, and/or sampling data demonstrating the wattles/filters/socks are not sufficiently reducing pollutant concentrations;
- h. Within twenty-four (24) hours prior to a Forecasted Rain Event, inspect all wattles/filters/socks deployed at the site;
- i. Within twenty-four (24) hours prior to a Forecasted Rain Event, cover any exposed debris and scrap bins and trash cans with tarps, lids, or other coverings sufficient to prevent exposure to rainfall, including without limitation those stored outside and where roof protection is inadequate, or otherwise move them into a covered structure adequate to prevent exposure to rainfall;
- j. Store inutile or abandoned racks, vehicles, equipment, paint and waste scrap materials, if any, indoors or undercover; and
- k. Institute an equipment and vehicle maintenance program that ensures:
  - i. No maintenance activities occur outdoors during wet weather, unless such maintenance is required for safe operation of the Facilities, *e.g.*, a forklift breaks down in a location that prevents ingress/egress;
  - ii. Maintenance activities occur only in designated work areas or beneath covered maintenance areas; and

1                   iii. When maintenance activities must be performed outdoors,  
2                   action shall be taken to immediately contain, capture, and  
3                   clean up any discharge or spills of waste fluids to the  
4                   ground.

5           Within fifty-two (52) days of the Effective Date, Defendant shall confirm to  
6   Plaintiffs in writing, with photographs where appropriate, that subparts a through d  
7   above were completed.

8           **B.     SAMPLING AT THE FACILITIES**

9           16. Defendant shall develop a monitoring program consistent with the  
10   General Permit. During the Term, Defendant shall collect samples of storm water  
11   discharge from each Discharge Point from Qualifying Storm Events to the extent  
12   required by the General Permit. Defendant shall use best efforts to collect such  
13   samples during the first two (2) Qualifying Storm Events during scheduled facility  
14   operating hours and when conditions are safe in each half of the Reporting Year (or  
15   where the Facility has obtained a sampling frequency reduction certificate, during the  
16   first Qualifying Storm Event during scheduled facility operating hours and when  
17   conditions are safe in each half of the Reporting Year). If Defendant would have been  
18   required to collect samples during a precipitation event during scheduled operating  
19   hours but the precipitation event does not produce a discharge, or occurs during  
20   unsafe sampling conditions (i.e., dangerous weather conditions such as flooding or  
21   electrical storms), Defendant will collect photographic evidence of the lack of  
22   discharge or unsafe sampling conditions where feasible. Defendant shall submit such  
23   photographs, if any, to LA Waterkeeper at the email addresses listed below at  
24   Paragraph 57, along with rain gauge/sensor data for specific precipitation events or  
25   time frames, within fourteen (14) days of a written request for such records by LA  
26   Waterkeeper.

1           17.   Sampling Parameters. All samples collected in accordance with the  
2 General Permit and this Consent Decree shall be analyzed, at minimum, for the  
3 parameters listed in Table 1.

4           18.   Laboratory and Holding Time. Except for pH samples, Defendant shall  
5 deliver all samples to a California-certified environmental laboratory for analysis  
6 within allowable hold times, pursuant to 40 C.F.R. Part 136.

7           19.   Methods. All QSE samples collected in accordance with this Consent  
8 Decree and the General Permit shall be analyzed using the methods specified in the  
9 General Permit. Analysis of pH will be completed onsite using a portable instrument  
10 that is calibrated and used according to the manufacturer's instructions.

11          20.   Reporting. Defendant shall provide complete laboratory results of all  
12 QSE samples collected at the Facilities to the Stormwater Multiple Application and  
13 Reporting Tracking System ("SMARTS") in accordance with the General Permit, and  
14 shall provide copies to LA Waterkeeper within fourteen (14) days of receiving the  
15 laboratory report with the results.

16           **C.    REDUCTION OF POLLUTANTS IN DISCHARGES**

17          21.   Table 1 Numeric Limits.

**TABLE 1<sup>2</sup>**

| Parameter  | Numeric Limit  | Source of Limit    |
|--|--|--------------------|
| Aluminum, Total                                    | 0.75 mg/L<br>(annual)                                | General Permit NAL |
| Ammonia (as N) (only<br>as to the Carson Facility) | 2.14 mg/L<br>(annual)                                | General Permit NAL |
| Iron, Total  | 1.0 mg/L (annual)                                    | General Permit NAL |
| Nitrite + Nitrate (as N)                           | 0.68 mg/L<br>(annual)                                | General Permit NAL |
| Oil & Grease                                       | 15 mg/L (annual);<br>25 mg/L<br>(instantaneous)      | General Permit NAL |
| pH   | < 6 or > 9 s.u.<br>(instantaneous)                   | General Permit NAL |
| Total Suspended Solids                             | 100 mg/L<br>(annual);<br>400 mg/L<br>(instantaneous) | General Permit NAL |

22. Table 1 Exceedances. An “Exceedance” of Table 1 has the same meaning as an Exceedance under the General Permit:

- a. For annual NALs, an Exceedance occurs when the average of all analytical results from all samples taken at a facility during a Reporting Year for a given parameter exceeds an annual NAL value listed in Table 1 above; or,
- b. For the instantaneous NALs, an Exceedance occurs when two or more analytical results from samples taken for any parameter within a Reporting Year exceed the instantaneous NAL value, or are outside of the instantaneous NAL range (for pH).

<sup>2</sup> The numeric limits listed in Table 1 are for reference only, and the Table 1 limit applicable to each parameter shall be the then-effective limit provided by the applicable source, e.g., if the NAL for iron is either increased to 1.1 mg/L or decreased to 0.90 mg/L, such new NAL, and not 1.0 mg/L, shall be used as the Table 1 limit for the purposes of this Consent Decree as if set forth herein. If the source of a limit in Table 1 is revised to no longer provide a limit for a given parameter, e.g., the NAL for iron being removed, then the Parties shall meet and confer regarding the applicable Table 1 limit for such parameter for the purposes of this Consent Decree.

1           23. Action Plan. If storm water samples demonstrate an Exceedance as  
2 defined above, Defendant shall prepare and submit to LA Waterkeeper a plan for  
3 reducing and/or eliminating the relevant discharge of pollutants for the applicable  
4 Facility (“Action Plan”).<sup>3</sup> The complete Action Plan shall be submitted to LA  
5 Waterkeeper by July 31 following the Exceedance (or June 30, 2028 if the  
6 Exceedance occurs during the 2027-2028 Reporting Year). If an Action Plan is  
7 required for both Facilities, Defendant may submit one Action Plan that addresses  
8 both Facilities.

- 9           a. Action Plan Requirements. Each “complete” Action Plan  
10 submitted shall include at a minimum: (1) the identification of the  
11 Exceedance(s); (2) an explanation of the possible cause(s) and/or  
12 source(s) of each Exceedance; (3) the identification of any  
13 modified or additional BMPs that will be implemented to achieve  
14 compliance with the numeric limit(s), as well as the design plans  
15 and calculations of these additional BMPs; and (4) time schedules  
16 for implementation of the proposed BMPs. The time schedule(s)  
17 for implementation shall ensure that all BMPs are implemented as  
18 soon as possible, but in no event later than ninety (90) days  
19 following the submission of the Action Plan, unless a later  
20 implementation date is mutually agreed upon by the Settling  
21 Parties. Within thirty (30) days of each of the BMPs set forth in  
22 the Action Plan being implemented, Defendant shall notify LA  
23 Waterkeeper in writing, with representative photographs, that such  
24 BMP has been implemented as set forth in the Action Plan.

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28 <sup>3</sup> The “Action Plan” discussed in this Consent Decree is a separate and distinct requirement from any “Action Plan” or Exceedance Response Actions discussed in the General Permit.

- 1           b.    Action Plan Proposed BMPs. The following BMPs should  
2           generally be evaluated for inclusion in Action Plans to attain the  
3           Table 1 levels in the applicable Facility's storm water discharges:
- 4           i.    Hydrologic Controls. Installation of additional berms or  
5           equivalent structural controls necessary to reduce or prevent  
6           storm water from flowing off site other than through the  
7           engineered storm water conveyance system or storm water  
8           retention or treatment facilities.
- 9           ii.   Sweeping. The increased/more frequent use of sweepers  
10          and manual sweeping in otherwise inaccessible areas.
- 11          iii.   Treatment Systems. Installing additional components or  
12          systems, or otherwise improving, an advanced storm water  
13          treatment system, or making changes to the operation and  
14          maintenance protocols for such system, to provide more  
15          effective filtration treatment of storm water prior to  
16          discharge.
- 17          iv.    Evaluation of Existing BMPs. Replacing, rehabilitating, or  
18          eliminating existing BMPs, taking into account the age of  
19          the BMPs involved or employed, the engineering aspect of  
20          the application of various BMPs, and any adverse  
21          environmental impact of the BMPs.
- 22          c.    Action Plan Review. LA Waterkeeper shall have thirty (30) days  
23          upon receipt of Defendant's complete Action Plan to provide  
24          Defendant with comments. Within fourteen (14) days of receiving  
25          LA Waterkeeper's proposed revisions to an Action Plan,  
26          Defendant shall consider each of LA Waterkeeper's recommended  
27          revisions and accept them or justify in writing why any comment  
28          is not incorporated. Action Plan(s) developed and implemented

1 pursuant to this Consent Decree are an obligation of this Consent  
2 Decree. Any disputes as to the adequacy of an Action Plan shall  
3 be resolved pursuant to the dispute resolution provisions of this  
4 Consent Decree, set out in Section IV below. Disputes regarding  
5 the adequacy of a particular BMP shall not impact the schedule for  
6 implementing any other unrelated BMP(s) set forth in the Action  
7 Plan.

8 d. Action Plan Payments. Action Plan Payments shall be included in  
9 the Compliance Monitoring Payment set forth in Paragraph 31,  
10 below.

11 e. Meet and Confer Following Exceedance of Instantaneous NAL. If  
12 an Exceedance of an instantaneous NAL occurs at either Facility  
13 prior to December 31 of any Reporting Year, within fourteen (14)  
14 days of receipt of the laboratory report demonstrating the  
15 Exceedance, Defendant shall notify LA Waterkeeper of the  
16 Exceedance, and within thirty (30) days of such notification, the  
17 Parties shall meet and confer to discuss the adequacy of BMPs  
18 and possible modified or additional BMPs that may address the  
19 Exceedance. No Action Plan shall be required until July 31  
20 following the Exceedance, as set forth above, but such Action  
21 Plan shall incorporate the substance of the Parties' meet and  
22 confer discussion.

23 **D. VISUAL OBSERVATIONS**

24 24. Storm Water Discharge Observations. Defendant shall comply with the  
25 sampling event visual observation requirements set forth in Section XI.A.2 of the  
26 General Permit.

27 25. Monthly Visual Observations. Defendant shall comply with the monthly  
28 visual observation requirements set forth in Section XI.A.1 of the General Permit



1           26. Visual Observations Records. Defendant shall maintain observation  
2 records, including representative photographs (as applicable), to document  
3 compliance with Paragraphs 24 and 25. Such records shall include the date,  
4 approximate time, locations observed, presence and probable source of any observed  
5 pollutants, name of person(s) that conducted the observations, and any response  
6 actions and/or additional SWPPP revisions necessary in response to the visual  
7 observations. Defendant shall provide LA Waterkeeper with a copy of those records  
8 within fourteen (14) days of receipt of a written request from LA Waterkeeper for  
9 those records.

10           27. Employee Training Program. During the term of this Consent Decree,  
11 Defendant shall comply with all employee training requirements in the Facilities'  
12 SWPPPs and General Permit. Defendant shall maintain training records to document  
13 compliance with this Paragraph and shall provide LA Waterkeeper with a copy of  
14 these records within fourteen (14) days of receipt of a written request.

15           28. SWPPP Revisions.

16           a. Initial SWPPP Revisions. Defendant shall amend the Facilities'  
17 SWPPPs to incorporate the requirements in this Consent Decree  
18 and comply with the General Permit and submit the complete,  
19 updated SWPPPs to LA Waterkeeper within thirty (30) days of the  
20 Effective Date for LA Waterkeeper's review and comment.

21           b. Additional SWPPP Revisions.

22           i. Within thirty (30) days after completion of the Action Plan  
23 review process set forth in Paragraph 23 above (or  
24 resolution of any Action Plan dispute pursuant to Section  
25 IV below), Defendant shall revise the then-current SWPPP  
26 for the relevant Facility to reflect the changes required by  
27 the Action Plan and submit the complete, updated SWPPP  
28

1 to LA Waterkeeper for LA Waterkeeper's review and  
2 comment.

3 ii. Within thirty (30) days after any material changes in  
4 sources of industrial pollutants that may affect the quality of  
5 industrial storm water discharges, changes to Discharge  
6 Points, changes in the relevant Facility contacts or PPT  
7 members, changes or additions of BMPs, or changes in or  
8 additions of industrial activities that impact storm water  
9 discharge, Defendant shall revise the then-current SWPPP  
10 for the relevant Facility to reflect such changes and submit  
11 the complete, updated SWPPP to LA Waterkeeper for LA  
12 Waterkeeper's review and comment.

13 c. Review of SWPPP. For any SWPPP updates pursuant to  
14 Paragraphs 28.a. and 28.b., LA Waterkeeper shall have thirty (30)  
15 days upon receipt of Defendant's complete SWPPP for the  
16 applicable Facility to provide Defendant with comments. Within  
17 thirty (30) days of receiving LA Waterkeeper's comments and  
18 proposed changes to a given SWPPP, Defendant shall consider  
19 each of the comments and proposed changes and either accept  
20 them or justify in writing why a change is not incorporated. The  
21 Parties agree to work in good faith to resolve any disputes with  
22 respect to a given SWPPP, and any remaining disputes will be  
23 resolved through timely initiation of the dispute resolution  
24 procedures in Section IV below. Following its incorporation of  
25 proposed modification or additions (if any) into each revised  
26 SWPPP, Defendant shall upload the revised SWPPP to SMARTS  
27 to the extent required by the General Permit.  
28

**E. COMPLIANCE MONITORING AND REPORTING**

29. Site Inspections. LA Waterkeeper may conduct one annual site inspection (“Site Inspection”) of each Facility during each Reporting Year during the Term for the purpose of ensuring compliance with this Consent Decree and the General Permit. In the event a site inspection would be relevant to resolving a Dispute Resolution proceeding invoked in accordance with Section IV of this Consent Decree, the Parties’ shall use utilize the annual Site Inspection for resolving the dispute, where feasible, provided that the inspection shall not necessarily be limited to the area of the Facility relevant to the Dispute Resolution proceeding. Where utilization of the annual Site Inspection is not possible (*e.g.*, because the annual Site Inspection already occurred or the dispute-related site inspection must occur in specific weather), the Parties agree to meet and confer regarding a potential additional site inspection at the applicable Facility for purposes of resolving the dispute. Any Site Inspection shall occur during scheduled facility operating hours, and LA Waterkeeper will provide Defendant with as much notice as possible but at least forty-eight (48) hours’ notice prior to a Site Inspection in anticipation of wet weather and at least seventy-two (72) hours’ notice prior to a Site Inspection in anticipation of dry weather. For any Site Inspection requested to occur in wet weather, in the event the forecast changes and anticipated precipitation appears unlikely, and thus frustrates the purpose of visiting the Facilities in wet weather, the Parties shall meet and confer to adjust timing or reschedule during normal business hours without requiring an additional forty-eight (48) hours’ notice. Notice will be provided by telephone and electronic mail to the individual(s) designated below at Paragraph 57. During a Site Inspection during wet weather, LA Waterkeeper may request that Defendant collect a sample of industrial storm water discharge from the inspected Facility’s Discharge Point, to the extent that such discharges are occurring. Defendant shall collect the sample and provide a split sample to LA Waterkeeper. LA

1 Waterkeeper's representative(s) may observe the split sample(s) being collected by  
2 Defendant's representative.

3 30. Document Provision. During the Term, Defendant shall notify and  
4 submit documents to LA Waterkeeper as follows:

5 a. Defendant shall provide LA Waterkeeper with a copy of all  
6 compliance documents, monitoring and/or sampling data, written  
7 communications and/or correspondences, or any documents  
8 related to storm water quality at either of the Facilities that are  
9 submitted to the Regional Board or the State Board within seven  
10 (7) days of submission. Alternatively, if the submission to the  
11 Regional Board or State Board is made via SMARTS, Defendant  
12 may satisfy this requirement by providing notice to LA  
13 Waterkeeper via electronic mail that said results have been  
14 uploaded to SMARTS within seven (7) days of uploading said  
15 documents.

16 b. Any compliance document, inspection report, written  
17 communication and/or correspondence, or any document related  
18 to storm water quality at either of the Facilities received by  
19 Defendant from the Regional Board or the State Board shall be  
20 sent to LA Waterkeeper within seven (7) days of receipt by  
21 Defendant.

22 31. Compliance Monitoring. Defendant agrees to partially defray costs  
23 associated with LA Waterkeeper's monitoring of Defendant's compliance with this  
24 Consent Decree, including but not limited to Action Plan payments required by this  
25 Consent Decree during the Term, by paying Thirty-Three Thousand Dollars  
26 (\$33,000.00) within forty-five (45) days of the Effective Date. The payment shall be  
27 made via check, made payable to: "Los Angeles Waterkeeper" and delivered via  
28 certified mail, return receipt requested to Los Angeles Waterkeeper, c/o Barak

1 Kamelgard, 360 E 2nd Street Suite 250, Los Angeles, CA 90012. Failure to submit  
2 payment as required under this Paragraph will constitute breach of the Consent  
3 Decree.

4 **F. ENVIRONMENTALLY BENEFICIAL PROJECT, LITIGATION FEES AND**  
5 **COSTS, MISSED DEADLINES, AND INTEREST**

6 32. Environmentally Beneficial Project. To fund environmentally beneficial  
7 projects that will reduce or mitigate the impacts of storm water pollution from  
8 industrial activities occurring in the San Pedro Bay watershed, and in recognition of  
9 the good faith efforts of Defendant to comply with all aspects of the General Permit  
10 and CWA, and in lieu of payments of any penalties, which have been disputed by  
11 Defendant but may have been assessed had this action been adjudicated in a manner  
12 adverse to Defendant, Defendant agrees to make a payment totaling Thirty Thousand  
13 Dollars (\$30,000.00) to the Rose Foundation made within sixty (60) days of the  
14 Effective Date, payable to the Rose Foundation for Communities and the  
15 Environment and sent via overnight mail to Rose Foundation, 201 4th Street, Suite  
16 102, Oakland, CA 94607. Failure to submit payment as required under this Paragraph  
17 will constitute breach of the Consent Decree.

18 33. Plaintiffs' Fees and Costs. Defendant shall pay a total of Seventy-One  
19 Thousand Dollars (\$71,000.00) to Plaintiffs to partially reimburse Plaintiffs for their  
20 investigation fees and costs, expert/consultant fees and costs, reasonable attorneys'  
21 fees, and other costs incurred as a result of investigating and filing the lawsuit, and  
22 negotiating a resolution of this matter. The payment shall be made within forty-five  
23 (45) days of the Effective Date and made payable to: Lozeau Drury LLP and  
24 delivered by overnight carrier to Lozeau Drury LLP, Attn: Rebecca Davis, 1939  
25 Harrison St., Ste. 150, Oakland, CA 94612. Failure to submit payment as required  
26 under this Paragraph will constitute breach of the Consent Decree.

27 34. Interest on Late Payments. Defendant shall pay interest on any  
28 payments, fees, or costs owed to Plaintiffs under this Consent Decree that Plaintiffs

1 have not received by the due date. The interest shall accrue starting the first day after  
2 the payment is due and shall be computed at a rate of the lower of 4% per year or the  
3 maximum rate permitted by applicable law. Interest on late payments shall be paid by  
4 check payable to: Rose Foundation for Communities and the Environment, and such  
5 funds shall be used for the sole purpose of funding environmentally beneficial  
6 projects, as described in Paragraph 32. Payment shall be sent via overnight mail to  
7 Rose Foundation, 201 4th Street, Suite 102, Oakland, CA 94607.

#### 8 **IV. DISPUTE RESOLUTION**

9 35. This Court shall retain jurisdiction over this matter for the Term for the  
10 purposes of enforcing its terms and conditions, and adjudicating all disputes among  
11 the Parties that may arise under the provisions of this Consent Decree. The Court  
12 shall have the power to enforce this Consent Decree with all available legal and  
13 equitable remedies, including contempt.

14 36. Informal Dispute Resolution. Either Party to this Consent Decree may  
15 invoke the dispute resolution procedures of this Section IV by notifying the other  
16 Party in writing of the matter(s) in dispute and of the disputing Party's proposal for  
17 resolution. The Parties shall then meet and confer in good faith (either telephonically  
18 or in person) within ten (10) days of the date of the notice in an attempt to fully  
19 resolve the dispute no later than thirty (30) days from the date of the meet and confer.

20 37. Formal Dispute Resolution. If the Parties cannot resolve the dispute  
21 within thirty (30) days from the date of the meet and confer described in Paragraph  
22 36, the Parties agree that the dispute may be submitted for formal resolution by filing  
23 a motion before the United States District Court for the Central District of California.  
24 The Parties agree to request an expedited hearing schedule on the motion.

25 38. In resolving any dispute arising from this Consent Decree before the  
26 Court, the prevailing Party shall be entitled to seek fees and costs incurred pursuant to  
27 the provisions set forth in Section 505(d) of the Clean Water Act, 33 U.S.C. §  
28

1 1365(d), and applicable case law interpreting such provisions, or as otherwise  
2 provided for by statute and/or case law.

3 **V. MUTUAL RELEASE OF LIABILITY AND COVENANT NOT TO SUE**

4 39. Plaintiffs' Waiver and Release of Defendant. In consideration of the  
5 above, upon the Effective Date of this Consent Decree, Plaintiffs, on their own behalf  
6 and on behalf of their officers and directors, release Defendant, its officers, directors,  
7 managers, employees, members, parents, subsidiaries, divisions, affiliates, successors  
8 or assigns, agents, attorneys and other representatives, from and waives all claims  
9 that were raised in the 60-Day Notice Letters and/or the Complaint up to and  
10 including the Termination Date of this Consent Decree.

11 40. Defendant's Waiver and Release of Plaintiffs. In consideration of the  
12 above, upon the Effective Date of this Consent Decree, Defendant, on its own behalf  
13 and on behalf of its officers, directors, employees, parents, subsidiaries, affiliates and  
14 each of their successors or assigns, release Plaintiffs, their officers and directors, from  
15 and waives all claims related to the 60-Day Notice Letters and/or the Complaint up to  
16 and including the Termination Date of this Consent Decree.

17 41. Enforcement of this Consent Decree is Plaintiffs' exclusive remedy for  
18 any violation of its terms, including any subsequent violation of the General Permit,  
19 or any successor, modified, or replacement permits, occurring prior to termination of  
20 the Consent Decree.

21 42. Nothing in this Consent Decree limits or otherwise affects the Parties'  
22 rights to address or take any position that they deem necessary or appropriate in an  
23 informal or formal proceeding before the State Board, Regional Board, EPA, or any  
24 other judicial or administrative body on any matter relating to Defendant's  
25 compliance at the Facilities with the General Permit or the Clean Water Act occurring  
26 or arising after the Effective Date.



1 **VI. MISCELLANEOUS PROVISIONS**

2 43. No Admission of Liability. The Parties enter into this Consent Decree  
3 for the purpose of avoiding prolonged and costly litigation. Neither the Consent  
4 Decree nor any payment pursuant to the Consent Decree shall constitute or be  
5 construed as a finding, adjudication, or acknowledgement of any fact, law, or  
6 liability, nor shall it be construed as an admission of violation of any law, rule, or  
7 regulation. Defendant maintains and reserves all defenses it may have to any alleged  
8 violations that may be raised in the future.

9 44. Counterparts. This Consent Decree may be executed in any number of  
10 counterparts, all of which together shall constitute one original document. Telecopy  
11 and/or facsimile copies of original signatures shall be deemed to be originally  
12 executed counterparts of this Consent Decree.

13 45. Authority. The undersigned representatives for Plaintiffs and Defendant  
14 each certify that they are fully authorized by the Party whom they represent to enter  
15 into this Consent Decree. A Party's signature to this Consent Decree transmitted by  
16 facsimile or electronic mail shall be deemed binding.

17 46. Construction. The language in all parts of this Consent Decree shall be  
18 construed according to its plain and ordinary meaning, except as to those terms  
19 defined in the Permit, the Clean Water Act, or specifically herein. The captions and  
20 paragraph headings used in this Consent Decree are for reference only and shall not  
21 affect the construction of this Consent Decree.

22 47. Full Settlement. This Consent Decree constitutes a full and final  
23 settlement of this matter.

24 48. Integration Clause. This is an integrated Consent Decree. This Consent  
25 Decree is intended to be a full and complete statement of the terms of the agreement  
26 between the Parties and expressly supersedes any and all prior oral or written  
27 agreements, covenants, representations, and warranties (express or implied)  
28 concerning the subject matter of this Consent Decree.



1           49.   Severability. In the event that any provision, paragraph, section, or  
2 sentence of this Consent Decree is held by a court to be unenforceable, the validity of  
3 the enforceable provisions shall not be adversely affected.

4           50.   Choice of Law. The laws of the United States shall govern this Consent  
5 Decree.

6           51.   Diligence. Defendant shall diligently file and pursue all required permit  
7 applications for any required BMPs and shall diligently procure contractors, labor,  
8 and materials needed to complete all BMPs by the required deadlines.

9           52.   Effect of Consent Decree. Compliance with this Consent Decree does  
10 not mean that Defendant is complying with the General Permit, the Clean Water Act,  
11 or any other law, rule, or regulation.

12           53.   Negotiated Settlement. The Settling Parties have negotiated this Consent  
13 Decree, and agree that it shall not be construed against the Party preparing it, but  
14 shall be construed as if the Settling Parties jointly prepared this Consent Decree, and  
15 any uncertainty and ambiguity shall not be interpreted against any one Party.

16           54.   Modification of the Consent Decree. This Consent Decree, and any  
17 provisions herein, may not be changed, waived, discharged, or terminated unless by a  
18 written instrument, signed by the Parties and approved by the Court. Any request to  
19 modify any provision of the Consent Decree, including but not limited to any  
20 deadline(s) set forth herein, must be made in writing at least fourteen (14) days before  
21 the existing deadline(s) applicable to the provision(s) proposed to be modified.

22           55.   Assignment. Subject only to the express restrictions contained in this  
23 Consent Decree, all of the rights, duties and obligations contained in this Consent  
24 Decree shall inure to the benefit of and be binding upon the Parties, and their  
25 successors and assigns. Defendant shall notify Plaintiffs within ten (10) days of any  
26 assignment.

27           56.   Force Majeure. Neither of the Parties shall be considered to be in default  
28 in the performance of any of their respective obligations under this Consent Decree

1 when performance becomes impossible due to a Force Majeure event. A Force  
2 Majeure event is any circumstance beyond a Settling Party's control, including  
3 without limitation, any act of God, war, fire, earthquake, flood, windstorm, pandemic,  
4 public health crisis, or natural catastrophe; criminal acts; civil disturbance, vandalism,  
5 sabotage, or terrorism; restraint by court order or public authority or agency; or action  
6 or non-action by, or inability to obtain the necessary authorizations or approvals from  
7 any governmental agency. A Force Majeure event shall not include normal inclement  
8 weather, economic hardship, inability to pay, or employee negligence. Any Party  
9 seeking to rely upon this Paragraph to excuse or postpone performance shall have the  
10 burden of establishing that it could not reasonably have been expected to avoid the  
11 Force Majeure event and which by exercise of due diligence has been unable to  
12 overcome the failure of performance. The Parties shall exercise due diligence to  
13 resolve and remove any Force Majeure event.

14 57. Correspondence. All notices required herein or any other correspondence  
15 pertaining to this Consent Decree shall be, to the extent feasible, sent via electronic  
16 mail transmission to the email addresses listed below, or if electronic mail is not  
17 feasible, then by certified U.S. mail with return receipt, or by hand delivery to the  
18 following addresses:

19 If to Plaintiffs:

20 Los Angeles Waterkeeper  
21 Barak Kamelgard  
22 Benjamin Harris  
23 Madeleine Siegel  
24 360 E 2<sup>nd</sup> St., Suite 250  
25 Los Angeles, CA 90012  
26 Email: barak@lawaterkeeper.org  
Email: ben@lawaterkeeper.org  
Email: madeleine@lawaterkeeper.org  
Phone: (310) 394-6162

27 Tyler Earl  
28 COMMUNITIES FOR A BETTER  
ENVIRONMENT

If to Defendant:

Scott Press  
Linde Inc.  
10 Riverview Drive  
Danbury, CT 06810  
[Scott.press@linde.com](mailto:Scott.press@linde.com)  
  
Erik Liebrecht  
Linde Inc.  
10 Riverview Drive  
Danbury, CT 06810  
[Erik.Liebrecht@linde.com](mailto:Erik.Liebrecht@linde.com)

6325 Pacific Boulevard, Suite 300  
Huntington Park, CA 90255  
tyler@cbeval.org  
Phone: (510) 302-0430 x116

With copies to:  
Rebecca Davis  
LOZEAU DRURY LLP  
1939 Harrison St., Suite 150  
Oakland, CA 94612  
rebecca@lozeaudrury.com  
Phone: (510) 836-4200

With copies to:  
Erika Spanton  
Beveridge & Diamond  
600 University Street, Suite 1601  
Seattle, WA 98101  
[espanton@bdlaw.com](mailto:espanton@bdlaw.com)  
(206) 315-4815

Notifications of communications shall be deemed submitted three (3) days after the date that they are postmarked and sent by first-class mail, or immediately after acknowledgement of receipt via email by the receiving Party. Any change of address or addresses shall be communicated in the manner described above for giving notices.

58. If for any reason the Federal Agencies should object to entry of this Consent Decree or to any portion of this Consent Decree or the District Court should decline to approve this Consent Decree in the form presented, the Parties shall use their best efforts to work together to modify the Consent Decree within thirty (30) days so that it is acceptable to the Federal Agencies or the District Court. If the Parties are unable to modify this Consent Decree in a mutually acceptable manner that is also acceptable to the District Court, this Consent Decree shall immediately be null and void as well as inadmissible as a settlement communication under Federal Rule of Evidence 408 and California Evidence Code section 1152.

The Parties hereto enter into this Consent Decree and submit it to the Court for its approval and entry as a final judgment.


1 IN WITNESS WHEREOF, the undersigned have executed this Consent Decree  
2 as of the date first set forth below.

3  
4 APPROVED AS TO CONTENT  
5  
6

7 Dated: October 21, 2024

By: \_\_\_\_\_  
Bruce Reznik  
Executive Director  
Los Angeles Waterkeeper

8  
9  
10  
11 Dated: 10/16/24, 2024

By:   
Darryl Molina Sarmiento  
Executive Director  
Communities for a Better  
Environment


12  
13  
14  
15 Dated: \_\_\_\_\_, 2024

By: \_\_\_\_\_  
Marcos Cuevas, Vice President,  
West Region  
Linde Inc.

16  
17  
18  
19 APPROVED AS TO FORM  
20

LOZEAU DRURY LLP

21  
22  
23 Dated: October 21, 2024

By:   
Rebecca Davis  
Attorney for Plaintiffs  
Los Angeles Waterkeeper and  
Communities for a Better  
Environment

BEVERIDGE & DIAMOND

Dated: \_\_\_\_\_, 2024

By: \_\_\_\_\_  
Erika Spanton  
Attorney for Defendant  
Linde Inc.

**IT IS SO ORDERED.  
FINAL JUDGMENT**

Upon approval and entry of this Consent Decree by the Court, this Consent Decree shall constitute a final judgment between the Plaintiffs and Defendant.

Dated: \_\_\_\_\_

CENTRAL DISTRICT OF CALIFORNIA

\_\_\_\_\_  
United States District Court Judge

1 IN WITNESS WHEREOF, the undersigned have executed this Consent Decree  
2 as of the date first set forth below.

3  
4 APPROVED AS TO CONTENT


5  
6  
7 Dated: \_\_\_\_\_, 2024

By: \_\_\_\_\_  
Bruce Reznik  
Executive Director  
Los Angeles Waterkeeper

8  
9  
10  
11 Dated: \_\_\_\_\_, 2024

By: \_\_\_\_\_  
Darryl Molina Sarmiento  
Executive Director  
Communities for a Better  
Environment

12  
13  
14  
15 Dated: October 21, 2024

By: \_\_\_\_\_  
  
Marcos Cuevas, Vice President,  
West Region  
Linde Inc.

16  
17  
18  
19 APPROVED AS TO FORM

20 LOZEAU DRURY LLP

21  
22  
23 Dated: \_\_\_\_\_, 2024

By: \_\_\_\_\_  
Rebecca Davis  
Attorney for Plaintiffs  
Los Angeles Waterkeeper and  
Communities for a Better  
Environment

1 BEVERIDGE & DIAMOND

2  
3  
4 Dated: October 21, 2024

By: \_\_\_\_\_  
Erika Spanton  
Attorney for Defendant  
Linde Inc.

5  
6  
7  
8  
9  
10 **IT IS SO ORDERED.**  
11 **FINAL JUDGMENT**

12 Upon approval and entry of this Consent Decree by the Court, this Consent  
13 Decree shall constitute a final judgment between the Plaintiffs and Defendant.  
14

15  
16 Dated: December 18, 2024

CENTRAL DISTRICT OF CALIFORNIA

17  
18   
19 \_\_\_\_\_  
20 United States District Court Judge  
21  
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